

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**EDWARD J. NICHOLAS,**

**Plaintiff,**

**v.**

**LOWELL WITMER, et al.,**

**Defendants.**

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**CIVIL NO. 3:CV-07-0228**

**(Judge Caputo)**

**M E M O R A N D U M**

**I. Background.**

Plaintiff, Edward J. Nicholas, an inmate at the State Correctional Institution in Albion, Pennsylvania, commenced this action by filing a *pro se* Civil Rights Complaint under the provisions of 42 U.S.C. § 1983. Plaintiff also filed a Motion for Leave to Proceed *in forma pauperis* (Doc. 4) and a Motion for Injunctive Relief (Doc. 6). The instant Complaint is among a string of civil actions by Plaintiff challenging alleged improprieties in his criminal proceedings in the Dauphin County, Pennsylvania, Court of Common Pleas. Plaintiff alleges, without elaboration, violation of his Eighth and Fourteenth Amendment rights, malicious prosecution, fraud, concealment of material facts, tampering with public records, fraudulent transfers, “signature ordinance violations” (Doc. 1 at 3), destruction of records, wrongful imprisonment, abuse of process, “diesel therapy of magistrate transfers” (*Id.*), and obstructing petitions for review. (*Id.* at 2-3.) He seeks injunctive relief, costs of suit, and monetary damages in the amount of \$15,000,000.00. For the reasons that follow, the Complaint will be dismissed, without prejudice, pursuant to 28 U.S.C. § 1915(g), and the Motion to Proceed *in forma pauperis* will be denied.

**II. Discussion.**

Under the provisions of 28 U.S.C. § 1915(g), a federal civil action by a prisoner proceeding *in forma pauperis* is barred if he or she has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

Last year, Plaintiff filed three (3) civil rights actions which were dismissed by this Court on ground that they were frivolous. See *Nicholas v. Evans*, Civil No. 4:06-CV-1414 (M.D. Pa. Aug. 21, 2006) (Jones, J.); *Nicholas v. Evans*, Civil No. 4:06-CV-1478 (M.D. Pa. Aug. 21, 2006) (Jones, J.); *Nicholas v. Evans*, Civil No. 4:06-CV-1541 (M.D. Pa. Oct. 3, 2006) (Caputo, J.). All of these cases were commenced by Plaintiff while he was incarcerated. Plaintiff's instant allegations relate to claims of impropriety in his preliminary hearing, trial, conviction, and sentence in his criminal proceedings. There is no allegation or indication that this inmate is in danger of imminent serious physical injury. Thus, the above-captioned action is barred, and it will be dismissed under § 1915(g). An appropriate Order follows.

Dated: February 21, 2007.

/s/ A. Richard Caputo  
A. RICHARD CAPUTO  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**EDWARD J. NICHOLAS,**

**Plaintiff,**

v.

**GEORGE ZOZOS, et al.,**

**Defendants.**

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**CIVIL NO. 3:CV-07-0227**

**(Judge Caputo)**

**ORDER**

**AND NOW, THIS 21<sup>st</sup> DAY OF FEBRUARY, 2007**, in accordance with the foregoing Memorandum, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Doc. 4) is **DENIED.**
2. Plaintiff's Complaint (Doc. 1) is **DISMISSED**, without prejudice, pursuant to the provisions of 28 U.S.C. § 1915(g).
3. Plaintiff's motion for injunctive relief (Doc. 6) is **DISMISSED.**
4. The Clerk of Court is directed to close this case.
5. Any appeal taken from this Order will be deemed frivolous, without probable cause, and not taken in good faith. See 28 U.S.C. § 1915(a)(3).

/s/ A. Richard Caputo  
A. RICHARD CAPUTO  
United States District Judge